

volition, or upon written request of the applicant or his or her attorney or representative. Such written request shall specify, as nearly as possible, the relevance, materiality, and scope of the testimony or documentary evidence sought and must show affirmatively that the testimony or documentary evidence cannot otherwise be produced. The examining officer shall document in the record his or her refusal to issue a subpoena at the request of the applicant.

(2) *Service of subpoenas.* Subpoenas shall be issued on Form I-138, and a record shall be made of service. The subpoena may be served by any person over 18 years of age, not a party to the case, designated to make such service by the district director.

(3) *Witness fees.* Mileage and fees for witnesses subpoenaed under this section shall be paid by the party at whose instance the subpoena is issued, at rates allowed and under conditions prescribed by the Service. Before issuing a subpoena, the officer may require the deposit of an amount adequate to cover the fees and mileage involved.

(4) *Failure to appear.* If the witness subpoenaed neglects or refuses to testify or to produce documentary evidence as directed by the subpoena, the district director shall request that the United States Attorney for the proper district report such neglect or refusal to any District Court of the United States, and file a motion in such court for an order directing the witness to appear and to testify and produce the documentary evidence described in the subpoena.

(5) *Extraterritorial testimony.* The testimony of a witness may be taken outside the United States. The witness's name and address shall be sent to the Service office abroad which has jurisdiction over the witness's residence. The officer taking the statement shall be given express instructions regarding any aspect of the case which may require special development or emphasis during the interrogation of the witness.

(e) *Record of examination.* At the conclusion of the examination, all corrections made on the application form and all supplemental material shall be con-

secutively numbered and listed in the space provided on the applicant's affidavit contained in the application form. The affidavit must then be subscribed and sworn to, or affirmed, by the applicant and signed by the Service officer. The affidavit shall be executed under the following oath (or affirmation): "I swear (affirm) and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this application for naturalization subscribed by me, and the evidence submitted with it, are true and correct to the best of my knowledge and belief." Evidence received by the officer shall be placed into the record for determination of the case. All documentary or written evidence shall be properly identified and introduced into the record as exhibits by number, unless read into the record. A deposition or statement taken by a Service officer during the initial examination or any subsequent examination shall be included as part of the record on the application.

(f) *Use of interpreter.* If the use of an interpreter is authorized pursuant to §312.4 of this chapter, the examining officer shall note on the application the use and identity of any interpreter. If the Service officer is proficient in the applicant's native language, the Service officer may conduct the examination in that language with the consent of the applicant.

[56 FR 50497, Oct. 7, 1991, as amended at 58 FR 49913, Sept. 24, 1993; 63 FR 12987, 12988, Mar. 17, 1998]

§ 335.3 Determination on application; continuance of examination.

(a) The Service officer shall grant the application if the applicant has complied with all requirements for naturalization under this chapter. A decision to grant or deny the application shall be made at the time of the initial examination or within 120-days after the date of the initial examination of the applicant for naturalization under §335.2. The applicant shall be notified that the application has been granted or denied and, if the application has been granted, of the procedures to be followed for the administration of the

oath of allegiance pursuant to part 337 of this chapter.

(b) Rather than make a determination on the application, the Service officer may continue the initial examination on an application for one reexamination, to afford the applicant an opportunity to overcome deficiencies on the application that may arise during the examination. The officer must inform the applicant in writing of the grounds to be overcome or the evidence to be submitted. The applicant shall not be required to appear for a reexamination earlier than 60 days after the first examination. However, the reexamination on the continued case shall be scheduled within the 120-day period after the initial examination, except as otherwise provided under §312.5(b) of this chapter. If the applicant is unable to overcome the deficiencies in the application, the application shall be denied pursuant to §336.1 of this chapter.

[56 FR 50497, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993]

§ 335.4 Use of record of examination.

In the event that an application is denied, the record of the examination on the application for naturalization, including the executed and corrected application form and supplements, affidavits, transcripts of testimony, documents, and other evidence, shall be submitted to the Service officer designated in §332.1 of this chapter to conduct hearings on denials of applications for naturalization in accordance with part 336 of this chapter. The record of the examination shall be used for examining the petitioner and witnesses, if required to properly dispose of issues raised in the matter.

[56 FR 50498, Oct. 7, 1991]

§ 335.5 Receipt of derogatory information after grant.

In the event that the Service receives derogatory information concerning an applicant whose application has already been granted as provided in §335.3(a) of this chapter, but who has not yet taken the oath of allegiance as provided in part 337 of this chapter, the Service shall remove the applicant's name from any list of granted applications or of applicants scheduled for ad-

ministration of the oath of allegiance, until such time as the matter can be resolved. The Service shall notify the applicant in writing of the receipt of the specific derogatory information, with a motion to reopen the previously adjudicated application, giving the applicant 15 days to respond. If the applicant overcomes the derogatory information, the application will be granted and the applicant will be scheduled for administration of the oath of allegiance. Otherwise the motion to reopen will be granted and the application will be denied pursuant to §336.1 of this chapter.

[56 FR 50498, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993]

§ 335.6 Failure to appear for examination.

(a) An applicant for naturalization shall be deemed to have abandoned his or her application if he or she fails to appear for the examination pursuant to §335.3 and fails to notify the Service of the reason for non-appearance within 30 days of the scheduled examination. Such notification shall be in writing and contain a request for rescheduling of the examination. In the absence of a timely notification, the Service may administratively close the application without making a decision on the merits.

(b) An applicant may reopen an administratively closed application by submitting a written request to the Service within one (1) year from the date the application was closed. Such reopening shall be without additional fee. The date of the request for reopening shall be the date of filing of the application for purposes of determining eligibility for naturalization.

(c) If the applicant does not request reopening of an administratively closed application within one year from the date the application was closed, the Service will consider that application to have been abandoned, and shall dismiss the application without further notice to the applicant.

[58 FR 49914, Sept. 24, 1993, as amended at 60 FR 6651, Feb. 3, 1995]